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**Board of Vocational Nursing
and Psychiatric Technicians**

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2011-84

FRANK CABALLERO DEL ROSARIO
546 N. Virgil Avenue, Apt. 302
Los Angeles, CA 90004

A C C U S A T I O N

Vocational Nurse License No. VN 163861

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about July 22, 1993, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 163861 to Frank Caballero Del Rosario (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws.

All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2875 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board of Vocational Nursing and Psychiatric Technicians ("Board") may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 2878 of the Code states:

"The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual nursing functions.

...

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter.

...

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

..."

6. Section 2878.5 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

...

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1 ...
2 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
3 hospital, patient or other record pertaining to narcotics or dangerous drugs as specified in
4 subdivision (b).”

5 7. California Code of Regulations, title 16, section 2518.5 states:

6 “The licensed vocational nurse performs services requiring technical and manual skills
7 which include the following:

8 (a) Uses and practices basic assessment (data collection), participates in planning, executes
9 interventions in accordance with the care plan or treatment plan, and contributes to evaluation of
10 individualized interventions related to the care plan or treatment plan.

11 (b) Provides direct patient/client care by which the licensee:

12 (1) Performs basic nursing services as defined in subdivision (a);

13 (2) Administers medications;

14 ...”

15 8. California Code of Regulations, title 16, section 2518.6 states:

16 “(a) A licensed vocational nurse shall safeguard patients'/clients' health and safety by
17 actions that include but are not limited to the following:

18 ...

19 (2) Documenting patient/client care in accordance with standards of the profession; and

20 ...

21 (b) A licensed vocational nurse shall adhere to standards of the profession and shall
22 incorporate ethical and behavioral standards of professional practice which include but are not
23 limited to the following:

24 (1) Maintaining current knowledge and skills for safe and competent practice;

25 ...

26 (5) Cooperating with the Board during investigations as required by Section 2878.1 of the
27 Business and Professions Code.

1 (c) A violation of this section constitutes unprofessional conduct for purposes of initiating
2 disciplinary action.”

3 9. California Code of Regulations, title 16, section 2519, states:

4 "As set forth in Section 2878 of the Code, gross negligence is deemed unprofessional
5 conduct and is a ground for disciplinary action. As used in Section 2878 'gross negligence' means
6 a substantial departure from the standard of care which, under similar circumstances, would have
7 ordinarily been exercised by a competent licensed vocational nurse, and which has or could have
8 resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief
9 that there was a conscious disregard or indifference for the health, safety, or welfare of the
10 consumer shall be considered a substantial departure from the above standard of care."

11 10. California Code of Regulations, title 16, section 2520, states:

12 "As set forth in Section 2878 of the Code, incompetence is deemed unprofessional conduct
13 and is a ground for disciplinary action. As used in Section 2878 'incompetence' means the lack of
14 possession of and the failure to exercise that degree of learning, skill, care and experience
15 ordinarily possessed and exercised by responsible licensed vocational nurses."

16 11. California Code of Regulations, title 16, section 2521, subdivision (c), states:

17 "For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5
18 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
19 considered to be substantially related to the qualifications, functions or duties of a licensed
20 vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed
21 vocational nurse to perform the functions authorized by his license in a manner consistent with
22 the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those
23 involving the following:

24 ...

25 (c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
26 violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the
27 Business and Professions Code.

28 ...”

12. Section 118 of the Code states:

"(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, 'board' includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,' 'registration,' and 'permit.' "

COST RECOVERY

13. Section 125.3 of the Code provides, in pertinent part, that the Board/Registrar/Director may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

14. **Benadryl**, is the trade name for the drug diphenhydramine, which is classified as an antihistamine, sedative, Anti-Parkinson, Anaphylaxis. In 50 mg capsules or tablets this is a prescription drug and considered a dangerous drug pursuant to Business and Professions Code section 4022.

1 15. **Tylenol**, a trade name for Acetaminophen, is a synthetic, nonopiate, centrally acting
2 analgesic derived from p-aminophenol.

3 16. **Unisom**, a trade name for Doxylamine Succinate, is a sleep-aid. Doxylamine is in a
4 class of medications called antihistamines. Doxylamine is also used in combination with
5 decongestants and other medications to relieve sneezing, runny nose, and nasal congestion caused
6 by the common cold. It works by blocking the action of histamine, a substance in the body that
7 causes allergic symptoms.

8 17. **Omniceil** is a computerized single dose medication dispensing machine. The user
9 enters a unique user identified, password and / or thumbprint scan in order to access and dispense
10 medication from the machine. The machine records the user name, patient name, medication,
11 dose, date and time of the dispensing/withdrawal. The Omnicell is integrated with hospital
12 pharmacy inventory management systems.

13 **FACTS COMMON TO ALL CAUSES OF DISCIPLINE**

14 18. The following facts are common to all causes for discipline of this accusation:

- 15 a. At all times relevant herein, Respondent was employed as a licensed vocational
16 nurse at Hollywood Presbyterian Medical Center;
- 17 b. Each nurse at Hollywood Presbyterian Medical Center is assigned a locked
18 medication cart and is responsible for safe-guarding the key to their medication
19 cart. Each medication cart will be empty at the start of a shift and each nurse
20 will stock their assigned medication cart with medications and medical supplies
21 to be administered to patients during their shift;
- 22 c. Each patient's medication is listed in their Medication Administration Record
23 (MAR) and each nurse must obtain these medications, including over-the-
24 counter medications, from Omnicell;
- 25 d. On June 27, 2011, Respondent worked the 7:00 p.m. to 7:00 a.m. shift at the
26 Sub-Acute Unit at Hollywood Presbyterian Medical Center;
- 27
28

- 1 e. On that same date, at approximately 4:15 a.m. to 4:30 a.m., Respondent lost his
2 key to the medication cart assigned to him;
- 3 f. Approximately fifteen minutes later, Charge Nurse A.G. received a key found
4 by another staff member. Charge Nurse A.G. recognized it as a medication cart
5 key and began attempting to determine which medication cart the key would
6 open;
- 7 g. Charge Nurse A.G. then came upon the first medication cart, which was
8 assigned to Respondent. As Charge Nurse A.G. was putting the key in the
9 medication cart, Respondent came out of a patient's room and stated "Oh, you
10 found my key." Charge Nurse A.G. advised Respondent that a lost key had
11 been given to her and she wanted to see which medication cart it belonged to;
- 12 h. As she was speaking to Respondent and Respondent stood next to her, Charge
13 Nurse A.G. then opened the medication cart with the key. While she was
14 opening the drawers of the medication cart, Charge Nurse A.G. discovered a
15 travel size bag containing two containers of crushed substances in the last
16 drawer;
- 17 i. When Charge Nurse A.G. questioned Respondent regarding the containers of
18 crushed substances, he stated that the substance belonged to him, and consisted
19 of crushed up Tylenol that he had given to Patient H., little by little;
- 20 j. When questioned by other staff members, Respondent was dishonest and
21 denied knowledge of the contents of the crushed substances, denied that the
22 substances were purchased by him, and denied that he administered the
23 substances to Patient H. Upon further questioning by staff members,
24 Respondent admitted that the crushed substances belonged to him, were
25 purchased by him, and consisted of Tylenol, Unisom and Benadryl, and that he
26 administered the substances to Patient H. through a G-tube because Patient H.
27 was complaining he could not sleep and was in pain. Respondent also admitted
28 that he had been giving this medication to Patient H. for about a month.

1 Respondent also admitted that he did not inform Patient H.'s physician about
2 the additional medication he was giving Patient H. Respondent also alleged
3 that Patient H. asked him for Tylenol but he gave him Tylenol in combination
4 with Unisom and Benadryl to help the patient sleep;

5 k. When Charge Nurse A.G. questioned Respondent, he also admitted that his
6 medication cart is always locked during his shift and that he does not share his
7 cart with anyone and if someone asks him for an item in his cart, he will open
8 the cart and give it to them;

9 l. Respondent's notes in Patient H.'s medical records for June 27, 2011 did not
10 indicate a complaint of not being able to sleep or of being in pain. Respondent
11 failed to document the patient's alleged complaints of pain or inability to sleep.
12 Respondent failed to follow the chain of command in order to notify the
13 appropriate person of the patient's complaints, if any, and to obtain adequate
14 treatment for the alleged complaints;

15 m. Patient H.'s medical records include an order for Tylenol on May 27, 2011. No
16 physician order is found for Tylenol on June 27, 2011. No Physician order for
17 Unisom or Benadryl is found in Patient H.'s medical record from approximately
18 on or about May 27, 2011 to June 27, 2011. Patient H.'s physician was
19 unaware that Patient H. was given additional medication by Respondent.
20 Further, Respondent administered medications that he did not have an order for;

21 n. Omnicell records showed Respondent had not removed any medications for
22 Patient H. from Ominicell from approximately April 27, 2011 to June 27, 2011.

23 o. Respondent was terminated from Hollywood Presbyterian Medical on July 8,
24 2011.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence- Unprofessional Conduct)**

3 19. Respondent is subject to disciplinary action under section 2878, subdivision (a)(1), in
4 conjunction with California Code of Regulations, title 16, section 2519, on the grounds of
5 unprofessional conduct, in that, from approximately May 27, 2011 to June 27, 2011, while
6 employed as a Licensed Vocational Nurse at Hollywood Presbyterian Medical Center,
7 Respondent was grossly negligent as more particularly set forth above in paragraph 18,
8 subparagraphs a-o, inclusive, as though set forth fully herein, including, but not limited to, in his
9 failure to fulfill his duty to safely and competently administer medication, in his lack of judgment
10 and unacceptable decision-making which had the potential to cause patient harm due to the
11 possibility of adverse drug interactions, and in his failure to fulfill his duty to protect a patient's
12 right to the right medication, right dose, right time, right route, and right patient.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Incompetence-Unprofessional Conduct)**

15 20. Respondent is subject to disciplinary action under section 2878, subdivision (a)(1), in
16 conjunction with California Code of Regulations, title 16, section 2520, and section 2518.6,
17 subdivision (b)(1), on the grounds of unprofessional conduct, in that, from approximately May
18 27, 2011 to June 27, 2011, while employed as a Licensed Vocational Nurse at Hollywood
19 Presbyterian Medical Center, Respondent was incompetent as more particularly set forth above in
20 paragraph 18, subparagraphs a-o, inclusive, as though set forth fully herein.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Failure to Properly Assess and Treat Patient-Unprofessional Conduct)**

23 21. Respondent is subject to disciplinary action under section 2878, subdivision (a)(1), in
24 conjunction with California Code of Regulations, title 16, sections 2520, 2518.5, subdivision (a),
25 and 2518.5, subdivision (b)(2) on the grounds of unprofessional conduct, including but not
26 limited to, in that, from approximately May 27, 2011 to June 27, 2011, while employed as a
27 Licensed Vocational Nurse at Hollywood Presbyterian Medical Center, Respondent failed to
28 properly use and practice basic assessment, participate in planning, execute interventions in

1 accordance with the care plan or treatment plan for Patient H., and failed to properly administer
2 medication to Patient H., as more particularly set forth above in paragraph 18, subparagraphs a-o,
3 inclusive, as though set forth fully herein.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Acts Involving Dishonesty- Unprofessional Conduct)**

6 22. Respondent is subject to disciplinary action under section 2878, subdivision (j), in
7 that, from approximately May 27, 2011 to June 27, 2011, while employed as a Licensed
8 Vocational Nurse at Hollywood Presbyterian Medical Center, Respondent committed dishonest
9 acts, including, but not limited to, by giving medication that was not obtained from Omnicell and
10 that was not part of the Patient H.'s treatment plan as determined by his physician, by failing to
11 notify Patient H.'s physician of, and failing to document, his treatment of Patient H. and Patient
12 H.'s alleged complaints, and concealing his treatment of Patient H., as more particularly set forth
13 above in paragraph 18, subparagraphs a-o, inclusive, as though set forth fully herein.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Falsify, Make Incorrect, Inconsistent Entries-Unprofessional Conduct)**

16 23. Respondent is subject to disciplinary action under section 2878.5, subdivision (e), in
17 conjunction with section 2518.6, subdivision (a)(2), in that, from approximately May 27, 2011 to
18 June 27, 2011, while employed as a Licensed Vocational Nurse at Hollywood Presbyterian
19 Medical Center, Respondent failed to document patient care in accordance with standards of the
20 profession and falsified or made incorrect or grossly inconsistent entries pertaining to dangerous
21 drugs in Patient H.'s medical records, as more particularly set forth above in paragraph 18,
22 subparagraphs a-o, inclusive, as though set forth fully herein.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violating Vocational Nursing Act-Unprofessional Conduct)**

3 24. Respondent is subject to disciplinary action under section 2878, subdivision (d), in
4 conjunction with California Code of Regulations, title 16, section 2521, on the grounds of
5 unprofessional conduct, in that, from approximately May 27, 2011 to June 27, 2011, while
6 employed as a Licensed Vocational Nurse at Hollywood Presbyterian Medical Center,
7 Respondent violated or attempted to violate directly or indirectly or assisted in violating the
8 Vocational Nursing Act, as more particularly set forth above in paragraph 18, subparagraphs a-o,
9 inclusive. as though set forth fully herein.

10 **DISCIPLINE CONSIDERATIONS**

11 25. On or about April 15, 2010, Complainant issued Citation Number 10-0054-L, with an
12 administrative penalty, to Respondent for violation of Sections 2892.5, subdivision (a), 2540.1,
13 subdivision (a), and 2540.5, subdivision (c), for failure to submit proof of completion of
14 continuing education.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
18 issue a decision:

- 19 1. Revoking or suspending Vocational Nurse License Number VN 163861, issued to
20 Frank Caballero Del Rosario;
- 21 2. Ordering Frank Caballero Del Rosario to pay the Board of Vocational Nursing and
22 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
23 pursuant to Business and Professions Code section 125.3;

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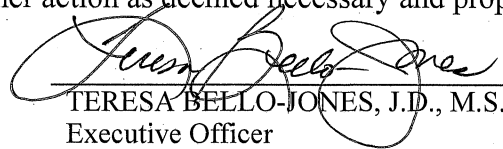
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3. Taking such other and further action as deemed necessary and proper.

DATED: JAN 25 2013



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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